

WILLARD K. TOM
General Counsel

LAURA M. SULLIVAN
ELIZABETH TUCCI
Federal Trade Commission
600 Pennsylvania Avenue, NJ-3212
Washington, DC 20580
202-326-3327, lsullivan@ftc.gov
202-326-2402, etucci@ftc.gov
202-326-3259 (facsimile)

PAUL J. FISHMAN
United States Attorney
PAUL A. BLAINE
Assistant United States Attorney
401 Market Street, 4th Floor
Camden, NJ 08101
856-757-5137

RECEIVED

APR 18 2011

AT 8:30
WILLIAM T. WALSH
CLERK

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**CIRCA DIRECT LLC, and
ANDREW DAVIDSON,**

Defendants.

Civil No. 11cv2172

**COMPLAINT FOR
PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC”), for its complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. § 41 *et seq.* The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false

advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).

DEFENDANTS

6. Defendant Circa Direct LLC (“Circa Direct”) is a New Jersey corporation with its principal place of business at 607 N. Delavan Avenue, Margate, New Jersey 08402. Circa Direct transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Circa Direct has advertised, marketed, and promoted acai berry-based weight-loss products and other products, programs, and services to consumers throughout the United States.

7. Defendant Andrew Davidson (“Davidson”) is the Chief Executive Officer of Circa Direct. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Circa Direct, including the acts

and practices set forth in this Complaint. Among other things, Defendant Davidson has negotiated and entered into agreements for the dissemination of Circa Direct's online advertising and has registered the websites through which Circa Direct has advertised, marketed, and promoted acai berry-based weight-loss products and other products, programs, and services. Defendant Davidson resides in this district, and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

COMMERCE

8. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

9. Since at least August 2009, Defendants have advertised, marketed, and promoted various products, programs, and services to consumers throughout the United States, including acai berry-based weight-loss products, work-at-home programs, and surplus auction services.

10. Defendants frequently promote these products, programs, and services through websites designed to look like news reports. The sites use domain names such as online6health.com, onlinenews6.com, online6reports.com,

online8report.com, and memphisgazette.net, and include titles such as News 6, News Daily 7, and New Jersey Job Report. The sites often include the names and logos of major broadcast and cable television networks, falsely representing that the reports on the sites have been seen on these networks.

11. The sites purport to provide objective investigative reports authored by reporters or commentators typically pictured on the sites. In some instances, the supposed authors of the reports also claim to have tested the products, programs, and services themselves, such as acai berry-based weight-loss products and surplus auction services, and to have experienced dramatic and positive results. Following the reports are “responses” or “comments” that appear to be independent statements made by ordinary consumers.

12. In fact, Defendants’ news reports are fake. Reporters or commentators pictured on the sites are fictional and never conducted the tests or experienced the results described in the reports. The “responses” and “comments” following the reports are simply additional advertising content, not independent statements from ordinary consumers.

13. The sole purpose of Defendants’ websites is to promote the featured products on behalf of third-party merchants who then sell the products on other websites. Defendants’ promotional websites are designed to entice consumers to

click on links that will transfer them to a merchant's website. Defendants receive a commission or other payment for each consumer who clicks on a link and ultimately makes a purchase or signs up for a "free trial" on the merchant's website. In this context, Defendants commonly are referred to as "affiliate marketers."

14. Defendants have failed to disclose in a clear and conspicuous manner that they are not objectively evaluating these products, programs, and services and, in fact, are being paid to promote the products, programs, and services. Defendants' websites either fail entirely to disclose these facts, or fail to do so adequately. The relevant information, if disclosed at all, typically appears in small type in the top border or at the bottom of the web page, following the fake consumer comments, well below the links to the products, programs, and services being sold.

15. In promoting acai berry-based weight-loss products through their websites, Defendants also make deceptive claims about the products. Defendants' sites promoting acai berry-based weight-loss products such as LeanSpa Acai, for example, contain representations that these products, alone or in combination with a companion product, cause rapid and substantial weight loss. Defendants typically claim on their sites that reporters who tested LeanSpa Acai, alone or in

combination with a companion product, on themselves lost twenty-five pounds in four weeks without any special diet or intense exercise.

16. In truth and in fact, LeanSpa Acai and other acai berry-based weight-loss products, alone or in combination with the featured companion product, do not cause rapid and substantial weight loss, nor do Defendants possess and rely upon a reasonable basis to substantiate representations that consumers who use these products will rapidly lose a substantial amount of weight.

VIOLATIONS OF THE FTC ACT

17. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

18. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. Section 12 of the FTC Act, 15 U.S.C. § 52, prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, LeanSpa Acai and other acai berry-based products are either a “food” or “drug” as defined in Section 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b), (c).

COUNT ONE

False and Unsubstantiated Product Claims

19. Through the means described in Paragraphs 9 through 16 of this Complaint, Defendants have represented, directly or indirectly, expressly or by implication, that use of LeanSpa Acai or other acai berry-based products, alone or in combination with a companion product, will result in rapid and substantial weight loss, including as much as twenty-five pounds in four weeks.

20. The representations set forth in Paragraph 19 of this Complaint are false or were not substantiated at the time the representations were made.

21. Therefore, the making of the representations as set forth in Paragraph 19 of this Complaint constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT TWO

Misrepresentations (Fake News Reports)

22. Through the means described in Paragraphs 9 through 16 of this Complaint, Defendants have represented, directly or indirectly, expressly or by implication, that:

- a. Defendants' websites are objective news reports;

- b. Objective news reporters have performed independent tests demonstrating the effectiveness of the products featured, including LeanSpa Acai and other acai berry-based products, alone or in combination with a companion product; and
- c. The comments following the “articles” on Defendants’ websites express the views of independent consumers.

23. In truth and in fact:

- a. Defendants’ websites are advertisements made to appear as objective news reports;
- b. Objective news reporters have not performed independent tests demonstrating the effectiveness of the products featured, including LeanSpa Acai and other acai berry-based products, alone or in combination with a companion product; and
- c. The comments following the “articles” on Defendants’ websites do not express the views of independent consumers.

24. Therefore, the making of the representations as set forth in Paragraph 22 of this Complaint constitutes a deceptive act or practice, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT THREE

Failures to Disclose (Connection to Seller)

25. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of LeanSpa Acai and other products, including through the means described in Paragraphs 9 through 16 of this Complaint, Defendants have represented, directly or indirectly, expressly or by implication, that the content of their websites has been authored by an objective journalist who has conducted independent tests.

26. In numerous instances in which Defendants have made the representation set forth in Paragraph 25 of this Complaint, Defendants have failed to disclose or disclose adequately to consumers that the content of Defendants' websites has not been authored by an objective journalist but is in fact an advertisement placed by Defendants. Defendants receive commissions or other payments when consumers purchase the products or sign up for "free trials" on the product-selling websites.

27. Defendants' failure to disclose or disclose adequately the material information described in Paragraph 26 of this Complaint, in light of the representation described in Paragraph 25 of this Complaint, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

28. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

29. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency

of this action and to preserve the possibility of effective final relief, including but not limited to temporary and preliminary injunctions, an order preserving assets, and an accounting;

B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

WILLARD K. TOM
General Counsel

DATED: 04/18/11


LAURA M. SULLIVAN
ELIZABETH TUCCI

Federal Trade Commission
600 Pennsylvania Avenue, NJ-3212
Washington, DC 20580
202-326-3327, lsullivan@ftc.gov
202-326-2402, etucci@ftc.gov
202-326-3259 (facsimile)

PAUL J. FISHMAN
United States Attorney
PAUL A. BLAINE
Assistant United States Attorney
401 Market Street, 4th Floor
Camden, NJ 08101
856-757-5137

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION